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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 2003P01287WOUS	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____ eFiled</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		Application Number 10/578,386	Filed 05/03/2006
		First Named Inventor Helmut Jerg et al.	
		Art Unit 1711	Examiner Jason Paul Riggleman
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____.</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>62,246</u></p>		<p>/Andre Pallapies/</p> <hr/> <p>Signature</p> <p>Andre Pallapies</p> <hr/> <p>Typed or printed name</p> <p>252-672-7927</p> <hr/> <p>Telephone number</p> <p>February 7, 2011</p> <hr/> <p>Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**STATEMENT OF ARGUMENTS FOR PRE-APPEAL BRIEF
REQUEST FOR REVIEW**

Dear Sir:

Applicants respectfully request a Pre-Appeal Brief Conference to consider the issues raised in the final Office Action dated November 10, 2010, and the Advisory Action dated February 2, 2011. This Statement is accompanied by a Notice of Appeal. Please charge Deposit Account No. 502786 for any deficiency or overpayment.

Applicants respectfully submit that the Office Action includes clear errors and factual deficiencies, and therefore, respectfully traverse the rejections.

1. The Office Action errs in the characterization of the Lutolf reference as having a “distributor” as claimed.

The Lutolf reference fails to disclose at least one distributor for regulating the supply of rinsing liquid to the at least one spray channel, as recited in claim 11. The Lutolf reference fails to disclose that the pressure is variable by means of the check valves 60, 80, which are compared to the claimed distributor. Instead, the Lutolf reference discloses check valves or one-way valves 60, 80, which simply allow flow in a single direction. The valve symbols used for 60, 80 in the Figure are consistent with the description of the Lutolf reference, which describes that the liquid flows only from pipes 55 and 77 through check valves 60, 80 respectively toward the shower pipes 3. A “check valve” is defined as “a valve that permits flow in one direction only.” See Response filed 01/07/2011 at p. 6. Thus, the check valves 60, 80 of the Lutolf reference do not regulate the supply of rinsing liquid to the spray channel. Rather, the check valves 60, 80 permit the rinsing liquid to be supplied unimpeded or unregulated into the pipe system 3 in the supply direction. The check valves 60, 80, by definition, simply restrict flow back from, or out of (i.e., return flow), the pipe system 3 toward the pipes 55 and 77, respectively (i.e., the reverse flow direction or return flow direction, not the supply direction).

The check valves 60, 80 of the Lutolf reference also are not capable of varying the pressure of the rinsing liquid. Absent the addition of some other device, the check valves

60, 80 themselves do not, and cannot, vary the pressure in the spray channels. Hence, the check valves 60, 80 are not a distributor as claimed.

2. The Office Action fails to give the claims their broadest reasonable interpretation as required by M.P.E.P. § 2111 and errs in the characterization of the Lutolf reference having “two open ends” as claimed.

The Advisory Action asserts that “the Lutolf reference teaches ends in which liquid can be supplied - they are “open”.” Applicants respectfully submit that this interpretation is inconsistent with the specification of the present application and fails to properly interpret the claims in view of the specification.

M.P.E.P. § 2111 states that during patent examination, the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” [...] Indeed, the rules of the PTO require that application claims must “conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.” [...] The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. Emphasis added Appellants.

Independent claim 11 recites the at least one spray channel [...] having two open ends via which rinsing liquid can be supplied to the open ends of the channel (i.e. entrance to the jet tube) in a pressurised manner by the distributor. Claim 11 positively defines the physical structure of the spray channel as having discrete features of two open ends such that rinsing liquid can be supplied to the spray channels from both sides under different pressurisation by a distributor such as described in the present application. See, e.g., paras. [012]-[015]. The features of the distributor that cooperate with the open ends of the spray channel are defined further by, for example, claim 22, in which the distributor is movable relative to the at least one spray channel in a to-and-fro displacement movement in alternating directions.

Hence, the general assertion that “the Lutolf reference teaches ends in which liquid can be supplied - they are “open”” is inconsistent with the specification of the present application and fails to properly interpret the claims in view of the specification.

As shown in the Figure, the Lutolf reference simply discloses a closed system of spray channels 3. The ends of the spray channels 3 are not open. Instead, the ends of the spray channel 3 are fixed to the check valves or one-way valves 60, 80. Hence, the Lutolf reference does not disclose “open” ends that are capable of functioning in the manner of the “open ends” of the claimed invention, e.g., as further defined by claim 22.

3. The Office Action errs in failing to consider the claimed invention “as a whole” as required by M.P.E.P. § 2141.02 (I).

The present invention is not simply that surges of liquid can be produced by opening valves, irrespective of how such is accomplished. Rather, the present invention provides a space-saving spray device (as defined by the claims) that has no moving spray arms, thereby minimizing breakdowns associated with such moving parts, eliminating interference between the spray device and the arrangement of items in the dishwasher, and improving the use of space within the dishwasher, while also providing uniform spraying, producing variable spray jets and different spray patterns, and providing a spray device that can be configured in almost any shape to correspond to any shape of the rinsing container. See, e.g., page 1, lines 25-29; page 2, lines 13-32; page 3, lines 1-9; and page 5, lines 13-18. Hence, when properly considered as a whole, the manual operation of valves of a foot bath to provide surges of liquid in the foot bath, as taught by the Van Dijck reference, has absolutely nothing to do with a dishwasher, and its teachings would be entirely impractical for use in a dishwasher. Therefore, one or ordinary skill in the art clearly would not have had an apparent reason to combine these references in the manner alleged to arrive at the claimed invention.

Moreover, while the Office Action has stated a rationale, Applicants respectfully submit that the Office Action has not established an adequate rationale for making such a combination *to arrive at the claimed invention*. That is, the stated rationale in the Office

Action "to create a washing machine in which there is fine control of the pulsing of the spray -- which is especially useful in a system with a stationary spray system -- to effectively wash the dishes and achieve the expected result" is not believed to be *adequate* to establish a *reasonable* basis for one of ordinary skill in the art to combine the references in the manner alleged *to arrive at the claimed invention*. Rather, based on the stated rationale, one of ordinary skill in the art would be motivated to combine the references to arrive at the teachings of the Steen reference, which provides fine control of the angle of spread covered by the spray. See, e.g., page 1, lines 47-51. The stated rationale does not provide any apparent reason to further provide the inventive features of the claimed invention which provides a spray device including at least one spray channel for guiding a rinsing liquid and at least one distributor for regulating the supply of rinsing liquid to the at least one spray channel, the at least one spray channel having, [...] openings for the passage therethrough of the rinsing liquid and having two open ends via which rinsing liquid can be supplied in a pressurised manner, as recited by claim 11. See Response filed 01/07/2011 at, e.g., pp. 8-11.

4. The Office Action errs in rejecting claim 22.

None of the applied references discloses or suggests that the at least one **distributor is movable relative to the at least one spray channel** in a to-and-fro displacement movement in alternating directions, as recited in claim 22.

In stark contrast, the Perry reference simply discloses a stationary valve 40 having *a part* (i.e., the slide plate 50) that reciprocates in a stationary slot 48 to control the flow rate of the water into the manifold. See, e.g., Perry at col. 2, lines 32-56. The valve 40 itself clearly does not move. Thus, the valve 40 of the Perry reference is NOT movable relative to the spray channel in a to-and-fro displacement movement in alternating directions, as recited in claim 22. Rather, the valve 40 itself is stationary. Only *a part* of the valve, i.e., the slide plate 50, is moveable. Thus, the Perry reference simply discloses a stationary valve 40. See Response filed 01/07/2011 at, e.g., pp. 13-16.

CONCLUSION

In view of the above, entry of the present Amendment and allowance of claims 11-42 are respectfully requested. If the Examiner has any questions regarding this Statement, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.